

A private club which restricts its renting of rooms to its members and their guests does not incur Hotel Operators' Occupation Tax on its rental receipts from such rooms. See 86 Ill. Adm. Code 480.101(b)(2). (This is a GIL.)

January 28, 2005

Dear Xxxxx:

This letter is in response to your letter dated December 21, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We respectfully request a General Information Letter pursuant to 2 Ill. Admin. Code Section 1200.120 regarding the taxability of our client's business operations. The paragraphs below completely discuss the specific facts and legal authorities. There are no audits or litigation cases pending with respect to this request. To the best of the knowledge of both our client and our office, the Department has not previously ruled on the same or a similar issue for our client or predecessors. Neither our client nor our office previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. We thank you in advance for your prompt attention to this matter.

Facts

Our client operates a 'romantic getaway'. Our client operates as a private club whereby the purchase of a membership is required. Privacy is an important part of our client's business. Our client does not operate a hotel nor are its rooms used as hospitality suites.

The Annual Membership is \$25, which allows members to make reservations and stay at one of its rooms that contain hot tubs and even small pools. The Annual Membership

also provides members with special discount offers and complimentary items for birthday and anniversary reservations. Our client also offers an advanced membership or status (for an additional fee) that provides all of the benefits of the Annual Membership plus additional discounts.

Legal Authorities

We believe that receipts from our client's membership fees and member room fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax. The Department's Regulation 86 Ill. Admin. Code Section 480.101(b)(2) provides that '[s]ince the tax is limited to the renting of rooms to the 'public', a private club which restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from such rooms'.

Request for Ruling

Based on the facts and legal authorities contained in this request, we respectfully request that the Department issue a General Information Letter indicating that our client's membership fees and member rooms fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax.

Please call the undersigned if you have any questions or need any additional information. Also, please call the undersigned prior to issuing a letter that does not indicate that our client's membership fees and member rooms fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Use Tax Act, 35 ILCS 105/1 et seq., apply to the retail sale of tangible personal property. Generally, the Department does not consider receipts from the sale of club membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. This is the case when the sale of membership rights does not include the transfer of tangible personal property.

If an organization gives items to their members in Illinois, such as membership cards, pins, patches, or other complimentary items, those organizations owe Use Tax on the cost price of those items.

As you are aware, a private club which restricts its renting of rooms to its members and their guests does not incur Hotel Operators' Occupation Tax on its rental receipts from such rooms. See 86 Ill. Adm. Code 480.101(b)(2).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk